IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3093 OF 1986

Harshad Babulal Shah,)
carrying on business in the trade name)
and style of M/s.Harshad B. Shah as its)
sole proprietor, having its office at)
Ramesh Bhuvan, 1st Floor,)
Tamba Kanta, Bombay 400 003.)...Plaintiff

Versus

Shree Ganesh Filaments & Fabrics)
Manufacturing (India) Pvt Ltd.,)
a company registered under the Companies)
Act, having their registered office at)
Sagar Sadan, Shahi Baug,)
Ahmedabad 380 004.)...Defendants

Shri J.S.Shah for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 05, 2007.

ORAL JUDGMENT:

1. The Plaintiff has filed this suit for recovery of sum of Rs.01,04,530/- together with interest at the rate of 18% per annum from the date of filing of the suit on the principal amount of Rs.70,990.40/-.

2. According to the case of the Plaintiff he is carrying on business in the name and style of M/s.Harshal B. Shah as its sole proprietor. According to the Plaintiff his business is of cloth merchant. As per the instructions of the Defendants the Plaintiff in the trade name of M/s.Harshal B. Shah sold and

delivered to the Defendants grey shirting as per invoice dated 20th December, 1983 in the sum of Rs.26,248.81/- and invoice dated 21st December, 1983 for sum of Rs.51,779.34/-. According to the case of the Plaintiff grey shirting of total cost of Rs.78,028.15/- was sold by him to the Defendants.

3. After receiving material under invoice dated 20th December, 1983, the Defendants forwarded their report dated 26th December, 1983 intimating that there was shortage of 19 meters and 88.50 meters of shirting was returned. After receiving the material covered by invoice dated 21st December, 1983 the Defendants forwarded the report dated 26th December, 1983 showing that there was a shortage of 37 meters and material having length of 51.25 meters was returned. According to the case of the Plaintiffs, the cost of shortage and cost of returned goods shown by the Defendants in their report dated 26th December, 1983 was Rs.1119.67/- as the invoice was prepared at the rate of Rs.10.41/- per sq meter. As per the second report dated 26th December, 1983, cost of the shortage and returned goods comes to Rs.918.68/-. According to the case of the Plaintiff, after deducting the aforesaid amounts of Rs.1119.67/- and Rs.918.68/- the balance amount payable by the Defendants is Rs.70,990.40/-.

4. By Advocate's letter dated 19th June, 1984 the Plaintiff called upon the Defendants to pay the amount due at the rate of 18% per annum. The Defendants by their reply dated 19th July, 1984 disputed the claim of the Plaintiffs. Thereafter there was a further exchange of correspondence between the parties. Ultimately by communication dated 01st October, 1984 the Advocate for the Plaintiff finally called upon the Defendants to pay the outstanding amount together with interest at the rate of 18% per annum.

5. The Defendants filed written statement. The first contention raised in the written statement is that the Plaintiff has obtained a leave under clause 12 of the Letters Patent by suppressing the material facts from this Court and therefore, leave is liable to be revoked and consequently the suit will have to be dismissed. According to the case of the Defendants they used to purchase grey goods from one Babubhai who used to supply the said goods in the name of M/s.Harshad B. Shah, M/s.R.J.Corporation and M/s.M.B. Textiles. It is alleged that in March 1984 the said Babubhai on the behalf of the said three firms had contracted to supply to the Defendants fifteen thousand meters of grey cloth. However, the said Babubhai supplied only four thousand

meters of the grey cloth and refused to supply the balance quantity. It is stated that the Defendants were forced to purchase the balance quantity from open market at the cost which is higher than the price agreed by the said Babubhai. According to the case of the Defendant they submitted the debit note dated 18th April, 1984 in that behalf.

6. It is contended that due to defects in the grey fabric supplied by the Plaintiff, a lot of 2500 meters was burnt out at carbonizing stage. It is stated that the finished fabric became defective as a result of defects in grey fabric. It is stated that the Plaintiff took delivery of the said finished goods and agreed to give credit note to the Defendants at the rate of Rs.18/- per sq meter. The Defendants denied that any amount is payable by them.

7. Following issues were framed on 03rd February, 2006:

"1) Whether this Court has jurisdiction to entertain and try the suit and or leave granted under clause 12 of the Letters Patent is required to be revoked?

2) Whether the Plaintiff proves that the Plaintiff is entitled to sum of Rs.1,04,530/- alongwith interest at the rate of 18% per annum on principal amount of Rs.70,990.40/- inrespect of goods sold and delivered?

3) Whether the Defendant proves that the Plaintiff has committed breach of the said contract and thus the Defendant is not liable to make payment as alleged in para 4 of the written statement?

4) Whether the Defendant proves that the Defendant has suffered any losses by virtue of the breach of the contract on the part of the Plaintiff?

5) Whether the Defendant proves that the goods delivered by the Plaintiff are of sub-standard quality and having defects and thus the Defendant is not liable to make payment as alleged?

6) Relief if any?

8. The Plaintiff examined himself by filing his

affidavit in lieu of examination-in-chief. The examination-in-chief of the Plaintiff was recorded in Court on 24th August, 2007. However, none appeared for the Defendants and hence cross-examination of the Plaintiff by the Defendants was treated as closed. The suit was kept for further hearing on 31st August, 2007. On that day none appeared for the Defendants. Therefore, the evidence of the Defendants was ordered to be closed and today the arguments were heard. The Plaintiff has produced office copies of invoices dated 20th December, 1983 and 21st December, 1983. In view of what is stated in paragraph No.3 of the affidavit in lieu of examination in chief, the said two documents have been duly proved by the Plaintiff. The Plaintiff has also produced check reports dated 26th December, 1983 forwarded by the Defendants. The said two check reports have been duly proved by the Plaintiff. Office copies of the communications dated 19th June, 1984, 01st October, 1984, 23rd August, 1986 as well as 06th September, 1986 made by the Advocate for the Plaintiff to the Defendants have been also produced and proved by the affidavit in lieu of evidence of the Plaintiff. Copies of the reply dated 19th July, 1984, 09th November, 1984 and 30th August, 1986 are placed on record and have been proved.

9. Invoice dated 20th December, 1983 is in the sum of Rs.26.248.81/- in respect of quantity of 2521.50 meters at the rate of Rs.10.41/-. The invoice dated 21st December, 1983 is in respect of quantity of 4974.00 meters at the rate of Rs.10.41/- of totally amounting Rs.51.779.34/-. The first check report dated 26th December, 1983 shows that out goods mentioned in invoice dated 20th December, 1983 there was a shortage of 19meters and quantity of 88.50 meters was returned. The second check report dated 26th December, 1983 shows that there was a shortage of 37 meters and length of 51.25 meters was returned.

10. The rate at which the goods were sold is mentioned in the invoices and exact quantity of the shortage and/or goods returned is also mentioned in the check reports. Thus, the fact that goods worth Rs.77.028.15/- were supplied and delivered by the Plaintiff to the Defendants has been established. The quantity of shortfall and returned goods has been clearly mentioned in check reports dated 26th December, 1983. By calculating the cost of the material which is short or which is returned at the agreed rate of Rs.10.41, the Plaintiff has given credit for the value of shortage and returned goods. The Plaintiff has also given a credit for the part payment of a sum of

Rs.5000/-. The claim of the Plaintiff is restricted to Rs.70,990.40/- together with interest.

11. The burden to prove issue No.1 was on the Defendants and they have not discharged the said burden. In so far as the issue Nos.3 to 5 are concerned, the burden to prove the said issues was entirely on the Defendants. As the Defendants have not cross-examined the Plaintiff and have not led any evidence, the issue Nos.3 to 5 will have to be answered against the Defendants. The same is case with issue No.1. The affidavit in lieu of examination-in-chief of the Plaintiff has gone unchallenged as the Plaintiff has not been cross-examined. Thus, the Plaintiff has established that the Defendants are liable to pay a sum of Rs.70,990.40/-. In the two invoices it is stated that interest at the rate of 18% per annum will be charged from the date of the bill. The Plaintiff has calculated interest on the principal amount covered by both the invoices at the rate of 18% per annum till the date of institution of the suit. The total amount payable i.e the principal and interest from upto date of filing of suit comes to Rs.01,04,530/-. To that extent the claim of Plaintiff must succeed.

12. So far as further interest is concerned, it is

the discretion of the Court. The suit is filed in the year 1985. It is true that the suit arises out of a business transaction. Considering the nature of the transaction and the status of the parties, further interest is fixed at the rate of 9% per annum.

13. Hence, issue Nos.1 to 5 will have to be answered in favour of the Plaintiff.

14. Hence, I pass the following order:

(i) The suit is decreed as prayed with modification that interest payable on sum of Rs.70,990.40/- will be at the rate of 9% per annum from date of filing of the suit till payment or realisation.

(ii) The Defendants will pay costs of the suit to the Plaintiff and bear their own costs.

(iii) Certified copy is expedited.

JUDGE